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No. 01-1151

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

CARL RICCITELLI,

Petitioner,

v.

GREEN MOUNTAIN POWER CORP., WILSHIRE CREDIT CORP., and GIRARD SAVINGS BANKS n/k/a/ FIRST BANK OF BEVERLY HILLS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION

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March 11, 2002

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QUESTION PRESENTED

Whether, as determined by Congress and by every United States Circuit Court to consider the question, a debtor under Chapter 13 of the Bankruptcy Code has standing to litigate causes of action that may benefit the bankruptcy estate, or whether, instead, only the Chapter 13 trustee has standing to litigate such cases on behalf of the estate.

CORPORATE DISCLOSURE STATEMENT

Respondent Green Mountain Power Corporation has no parent corporations and no publicly-held company owns more than 10% of its shares.

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OPINIONS AND ORDERS BELOW

The United States Bankruptcy Court for the District of Vermont ruled from the bench in granting Respondent Green Mountain Power Corporation's Motion for Summary Judgment. Although the Bankruptcy Court did not issue a written opinion, its June 17, 1999 oral ruling is set forth verbatim in the Memorandum of Decision of the United States District Court for the District of Vermont, cited below.

The United States District Court for the District of Vermont issued a November 15, 2000 Memorandum of Decision affirming the June 17, 1999 ruling of the Bankruptcy Court. See Riccitelli v. Green Mountain Power Corp., Civil No. 1:00 cv 297 (D. Vt. Nov. 15, 2000). This Memorandum of Decision is reproduced in the Appendix to Riccitelli's Petition for Certiorari at 1b through 10b.

The United States Court of Appeals for the Second Circuit affirmed the District Court's decision by Summary Order dated July 5, 2001. See Riccitelli v. Green Mountain Power Corp., No. 00-5085 (2d Cir. July 5, 2001). This Summary Order is reproduced in the Appendix to Riccitelli's Petition for Certiorari at 1a through 5a.

JURISDICTIONAL STATEMENT

Petitioner, Carl Riccitelli ("Riccitelli") seeks review of a Summary Order of the United States Court of Appeals for the Second Circuit affirming the final judgment of the United States District Court for the District of Vermont, which in turn affirmed the decision of the United States Bankruptcy Court for the District of Vermont granting summary judgment in favor of Defendant-Respondent Green Mountain Power Corporation. This Court has jurisdiction to consider Riccitelli's petition pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Riccitelli filed a Chapter 13 petition in the United States Bankruptcy Court for the District of Vermont (the "Bankruptcy Court") on January 13, 1995. Represented by his counsel of record in this appeal, Riccitelli filed this adversary proceeding against Green Mountain Power Corporation ("GMP") in the Bankruptcy Court on January 13, 1998. He later amended his complaint, naming Wilshire Credit Corporation ("Wilshire") and Girard Savings Bank ("Girard") as additional defendants. In his complaint, as amended, Riccitelli claimed that GMP was liable to him under state law for damages resulting from a fire that destroyed his residence. Riccitelli also necessarily asserted that he had standing to bring, and that the Bankruptcy Court had jurisdiction to hear, his claims.

On June 17, 1999, the Bankruptcy Court granted summary judgment in GMP's favor, ruling that Riccitelli had failed to establish the essential elements of any of his claims. Riccitelli appealed the Bankruptcy Court's summary judgment decision to the United States District Court for the District of Vermont (the "District Court"). The District Court reviewed the case de novo and also concluded that, based on the undisputed facts, Riccitelli had failed to establish the essential elements of his claims. The District Court affirmed the decision of the Bankruptcy Court granting summary judgment in favor of GMP.

Riccitelli appealed the District Court's decision to the United States Court of Appeals for the Second Circuit. In his appeal, Riccitelli asserted for the first time that he may have lacked standing to assert his claims against GMP in the Bankruptcy Court, and that the Chapter 13 trustee alone possessed the necessary standing to sue GMP on claims benefiting the bankruptcy estate. Riccitelli made this

argument in the apparent hope that the Second Circuit would dismiss the case without prejudice, preserving his claims for relitigation in another forum.

Relying on its own well-settled precedent, the Second Circuit issued a Summary Order rejecting Riccitelli's argument that he lacked standing to sue GMP. The Second Circuit then went on to affirm the District Court's opinion granting summary judgment in favor of GMP, finding that GMP breached no duty owed to Riccitelli under Vermont law. Riccitelli now seeks review of the Second Circuit's decision to the extent it found that he had standing to press his claims against the defendants.

ARGUMENT

Before the Second Circuit, Riccitelli argued for the first time after nearly three years of litigation that he lacked standing to prosecute his claims because only the Chapter 13 bankruptcy trustee may commence a suit to benefit the bankruptcy estate. In rejecting Riccitelli's eleventh-hour attempt to have his own unsuccessful case dismissed without prejudice, the Second Circuit relied upon the unremarkable proposition that a Chapter 13 debtor retains the ability to sue on a cause of action that benefits the bankruptcy estate, and need not rely on the bankruptcy trustee to sue for him. The Second Circuit's decision was consistent with its own well-established precedent, the decisions of all of the other United States Circuit Courts to have considered the issue, and Congress' articulated intent. Thus, Riccitelli's Petition for Certiorari provides no legitimate grounds to revisit the Second Circuit's decision. To the contrary, his Petition is nothing more than an unsupported final attempt to resurrect baseless claims that have failed before the Bankruptcy Court, the District Court, and the Second Circuit.

As an initial matter, the argument Riccitelli advances is belied by the plain language of the Bankruptcy Code. Unlike Chapter 7, Chapter 13 of the Bankruptcy Code grants the debtor possession of the bankruptcy estate's property, 11 U.S.C. § 1306(b), which is defined by section 541 of the Code to include "all legal or equitable interests of the debtor in property . . . ." 11 U.S.C. § 541(a)(1). These legal and equitable interests in property include causes of action and other legal claims that could be prosecuted for the benefit of the estate.[1] Cable v. Ivy Tech State Col., 200 F.3d 467, 472-73 (7th Cir. 1999). Thus, a Chapter 13 debtor retains possession of all of his causes of action, even if those claims would benefit the bankruptcy estate.

The relevant legislative history confirms that, as the possessor of his legal claims, the Chapter 13 debtor retains the standing to prosecute them. Both the House of Representatives and Senate floor managers of the Uniform Law on Bankruptcies, Pub. L. No. 95-598 (1978), stated:

> Section 1303 . . . specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example . . ., ***certainly it is intended that the debtor has the power to sue and be sued***.

124 Cong. Rec. H. 11,106 (daily ed. Sept. 28, 1978) (remarks of Rep. Edwards); S. 17,423 (daily ed. Oct. 5, 1978) (remarks of Sen. DeConcini) (emphasis added).

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[1] Here, Riccitelli concedes, as he must in order to advance his standing argument, that his causes of action against GMP, Wilshire, and Girard are the property of, or serve to benefit, the bankruptcy estate. (See Riccitelli Petition for Cert. at 2, 5.)

In light of the text of the Code and its unambiguous legislative history, it is unsurprising that every United States Circuit Court to consider the question has determined that a Chapter 13 debtor retains the ability to sue upon causes of action that benefit the bankruptcy estate. See Rooney v. Thorson (In re Dawnwood Properties/78), 209 F.3d 114, 116 (2d Cir. 2000) ("[W]e found that a Chapter 13 debtor retains standing to litigate causes of action that, outside of bankruptcy, would belong to the debtor."); Cable, 200 F.3d at 472-73; Olick v. Parker & Parsley Petroleum Co., 145 F.3d 513, 515-16 (2d Cir. 1998); Maritime Elec. Co. v. United Jersey Bank, 959 F.2d 1194, 1209 n.2 (3d Cir. 1992). As the Seventh Circuit put it, "[i]t would frustrate the essential purpose of [Chapter 13] to grant the debtor possession of the chose in action yet prohibit him from pursuing it for the benefit of the estate." Cable, 200 F.3d at 473.

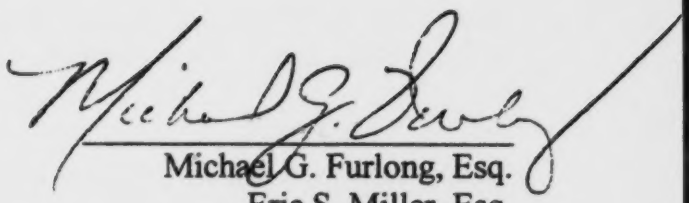
Seeking to create ambiguity in the law where none exists, Riccitelli argues that "the Second Circuit has expressly declined to state an opinion . . . as to whether a Chapter 13 debtor has concurrent standing with the trustee to pursue claims that augment the estate." (Riccitelli Petition for Cert. at 4.) Riccitelli is incorrect. As shown above, the Second Circuit has repeatedly found that the Chapter 13 debtor does have such standing. See Riccitelli v. Green Mountain Power, Corp., No. 00-5085, slip op. at 4 (2d Cir. July 15, 2001) (reproduced in Riccitelli's App. to Petition for Cert. at 4a); Rooney, 209 F.3d at 116; Olick, 145 F.3d at 515-16. The Second Circuit appears to have reserved judgment only on the question of whether a Chapter 13 debtor shares the trustee's avoiding powers. See Olick, 145 F.3d at 516. Those powers, and that question, are not implicated here.

In rejecting Riccitelli's attempt to have his own case dismissed for lack of standing, the Second Circuit acted consistent with Congress' expressed intent, the unanimous holdings of the United States Circuit Courts, and with sound public policy. Simply put, there exist no legitimate reasons to reexamine the Second Circuit's decision in this case. As a result, Riccitelli's Petition for Certiorari should be denied.

CONCLUSION

For the foregoing reasons, GMP respectfully requests that the Court deny Riccitelli's Petition for Certiorari.

Respectfully submitted:



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APPENDIX

APPENDIX OF STATUTES INVOLVED IN THE CASE

11 U.S.C § 1306. Property of the estate

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

11 U.S.C. § 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.